IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 998 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

LOPCHAND NARUJJI JAT

Versus

STATE OF GUJARAT

Appearance:

MR MJ BUDDHBHATTI for Petitioners

MS VALIKARIMWALA APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 01/12/98

ORAL JUDGEMENT

Heard learned advocate Mr. Buddhbhatti appearing for the petitioners and learned APP Ms. Valikarimwala for the respondent-State.

2. This appeal has been preferred against the conviction and sentence imposed by the learned Special Judge, Surat for the offence punishable under Section 9-B (1)(b) of the Explosives Act, 1884. A sentence of the rigorous imprisonment for one year and a fine of Rs. 1000/- has been imposed upon each of the accused-Appellants herein, and in default of payment of fine, to undergo simple imprisonment for three months.

3. On 20th April, 1988, the appellants came to Surat from Indore and were intercepted by the police at the Bus-stand. They were found to be in possession of 180 detonators. A criminal case No. 4 of 1990 was registered against the appellants-accused. The appellants were chargesheeted for the offence punishable under Sections 9-B of the Explosives Act, 1884 and Section 5 of the Terrorists & Disruptive Activities (Prevention) Act, 1985. Under the impugned judgment and order dated 12th October, 1998, the accused were acquitted of the offence punishable under Section 5 of the Terrorists & Disruptive Activities (Prevention) Act, however, were convicted for the offence punishable under Section 9-B (1)(b) of the Explosives Act, 1884 and were sentenced; as aforesaid. Feeling aggrieved, the appellants have preferred the present appeal.

4. Mr. Buddhbhatti has contended that prior sanction of the Central Government was essential for prosecuting the appellants for the offence punishable under the Explosives Act, 1884. The prosecution, however, has not obtained any such sanction. The prosecution against the appellant is, therefore, not maintainable. The appellants deserve to be acquitted on that ground alone. He has further contended that the substance recovered from the appellant can be said to be explosive substance, and therefore also, the appellants could not have been convicted for the offence punishable under the Explosives Act, 1884. Next he contended that there was no independent evidence which would prove the guilt against the present appellants. The evidence of the Investigating Officer has been relied upon by the Court below and on the basis of the evidence of the Investigating Officer alone, the appellants have been convicted. In absence of any independent evidence, the conviction cannot be sustained. He next contended that even if the conviction of the appellant is confirmed, the appellant having stood trial for 10 years, should not have been visited with the punishment of imprisonment. The appellants could have been imposed punishment of fine alone and there was no earthly reason for the Court below not to impose punishment of fine alone on the appellants.

5. I see no substance in either of the contentions raised by Mr. Buddhbhatti. Mr. Buddhbhatti has relied upon Section 7 of the Explosive Substances Act, 1908 and has submitted that prior sanction of the Central Government is sine qua none for prosecuting any person for an offence under the said Act. It does appear that Mr. Buddhbhatti has been misguided in believing that the appellants are tried under the Explosive Substances Act, 1908. The charge framed at Exh. 5 does disclose that the appellants were charged for the offence punishable under Section 5 of the Explosives Act, 1884 and not under the Explosive Substances Act, 1908. Mr. Buddhbhatti has not been able to point out any provision of law which requires prior sanction or consent for prosecuting the persons under the Explosives Act, 1884. In the circumstances, the contentions raised by Mr. Buddhbhatti requires to be rejected. Further, the word `explosive' has been defined in Section 4(d) of the Explosives Act, 1884. The definition of the word, `explosive' is wide enough to include any substance "manufactured with a view to produce a practical effect of explosion or pyrotechnic effect" and includes `detonators'. It is, therefore, not true that the substance recovered from the appellants was not an explosive as defined in the above referred provison. The substance recovered from the appellants was sent for examination to the Controller of Explosives, Baroda. The report of the Controller of Explosives has been produced by the prosecution at Exh. 23. The said report does clearly disclose that the substance recovered from the appellants was explosive of Class-2, as prescribed in Schedule-I to the Explosives Rules, 1983 and Ammonium tube with electrical red-wire were electric detonator i.e., explosive of Class-6 as defined in the said Schedule. Further, a licence is obligatory for possession, transportation, use, etc. of the said explosive. It, therefore, cannot be gainsaid that the substance recovered form the appellants was an explosive as defined in Section 4 (d) of the Explosives Act, 1884 or that the licence was required for possession and transportation of such explosive. I am unable to agree that the appellants could not have been convicted on the basis of sole evidence of the Investigating Officer. It does appear that other witnesses i.e., panch witness Maru Thabu Marnar (Exh. 13), witness Vijaykumar Mukundrai (Exh. 15) and panch witness Firoz Mahmoodbhai (Exh. 18) have turned hostile and no conviction could have been recorded on the basis of the evidence of the said witnesses. However, in the event the evidence of the Investigating Officer is found to be reliable, conviction can be based on the sole evidence of the Investigating

Officer also. In the present case, Mr.Buddhbhatti has not been able to show why the evidence of the Investigating officer should not be considered to be reliable evidence. The conviction based on the evidence of the Investigating Officer Shri A.M Rathod, therefore, need not be interfered with. I, therefore, confirm the order of conviction made against the appellants herein.

6. The offence under Section 9-B (1) (b) of the Explosives Act, 1884 is punishable with imprisonment for a term which may extend to two years or with fine, which may extend to three thousand rupees or with both. In the present case, the learned trial Judge has imposed punishment of imprisonment for a term of one year and a fine of rupees one thousand only. Be it noted that the appellants were travelling from Indore with 180 detonators. The said detonators were found to be of a company based at Rourkela. After disembarking at Surat, they tried to run away from the police. The quantity of the explosive carried by the appellants belies the contention that they were labourers and the detonators were being used for digging wells, etc. Considering the quantity of explosive possessed by the appellants, I do not consider it fit to interfere with the sentence imposed by the learned trial Judge. The sentence of imprisonment and fine is, therefore, confirmed.

7. For the reasons recorded herein above, this appeal is dismissed. Notice is discharged.

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Prakash*